

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸

Florence E. Harmon,

Deputy Secretary.

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DEPARTMENT OF STATE

[Public Notice 6115]

Notice of Availability of the Record of Decision and National Interest Determination and the Programmatic Agreement for the Proposed TransCanada Keystone Pipeline Project

Summary: This notice announces the availability of the Record of Decision and National Interest Determination and the Programmatic Agreement for the Proposed TransCanada Keystone Pipeline Project.

On April 19, 2006, TransCanada Keystone Pipeline, LP ("Keystone") filed an application with the Department of State for a Presidential permit for the construction, connection, operation, or maintenance of facilities at the border of the United States and Canada for the transport of crude oil between the United States and Canada across the international boundary.

Executive Order 13337 of April 30, 2004, as amended, delegates to the Secretary of State the President's authority to receive applications for permits for the construction, connection, operation, or maintenance of facilities, including pipelines, for the exportation or importation of petroleum, petroleum products, coal, or other fuels at the border of the United States and to issue or deny such Presidential Permits upon a national interest determination. The Executive Order directs the Secretary of State to refer the application and pertinent information to, and to request the views of, the heads of certain agencies before issuing a Permit and authorizes the Secretary to consult with other interested federal and state officials, as appropriate. The functions assigned to the Secretary have been further delegated within the Department of State to, *inter alia*, the Deputy Secretary of State and the Under Secretary of State for Economic, Energy, and Business Affairs.

In accordance with the National Environmental Policy Act of 1969 ("NEPA"), 42 U.S.C. 4321-4370f, the Council of Environmental Quality Regulations for Implementing the

Procedural Provisions of NEPA, 40 CFR parts 1500-1508, and the Department's regulations for the implementation of NEPA, 22 CFR part 161, an Environmental Impact Statement (EIS) for the issuance of a Presidential Permit for the construction, connection, operation, and maintenance of the pipeline was prepared by Entrex, Inc., a contractor selected by the Department of State.

The Department of State published in the **Federal Register** a Notification of Receipt of the Keystone Application for a permit on August 8, 2006 (71 Fed. Reg. 47861). That notification solicited public comment on the application for a 30-day period. Thereafter, the Department published in the **Federal Register** a Notification of Intent to Prepare an Environmental Impact Statement on October 11, 2006 (71 FR 59849). The Department's Notice of Availability of the Draft EIS and request for public comment was published in the **Federal Register** on August 9, 2007 (72 FR 44908-02), seeking comments by September 24, 2007. The Department received public comments in response to its notice and has taken them into account in making its determination on the Keystone application.

As required by Executive Order 13337, the Keystone pipeline application and a Draft Environmental Impact Statement were transmitted to federal agencies for their review and comment on August 6, 2007. The Department of State received no objections from federal agencies regarding the issuance of a permit. The Department published a notice of the availability of the Final Environmental Impact Statement in the **Federal Register** on January 11, 2008 (73 FR 2027).

Concurrently, the Department took steps to comply with its obligations under Section 106 of the National Historic Preservation Act. On February 15, 2008, Deputy Secretary of State John D. Negroponte signed a Programmatic Agreement with the Advisory Council on Historic Preservation (ACHP), the applicant, all seven state historic preservation officials, and consulting federal agencies. Native American tribes were also invited to sign as concurring parties under the ACHP's guidelines. The purpose of the Programmatic Agreement is to take into account the effect of the proposed Keystone Pipeline Project on historic properties and to satisfy all responsibilities under Section 106 of the National Historic Preservation Act.

Consistent with its authority under Executive Order 13337, the Department reviewed all of the available information

and documentation, including comments submitted by federal and state agencies and the public. On February 23, 2008, the Secretary's Delegate, Under Secretary of State for Economic, Energy, and Business Affairs Reuben Jeffery III, signed the Record of Decision and National Interest Determination, which states that issuance of the Presidential Permit for the Keystone Pipeline Project would serve the national interest. Accordingly, the Department proposes to issue the Presidential Permit to Keystone subject to certain terms and conditions.

Executive Order 13337 requires that Secretaries or Heads of certain agencies be notified of the Department's proposed determination concerning issuance of the Presidential Permit. Any agency required to be consulted under Section 1(g) of the Order that disagrees with the proposed determination may notify the Secretary of State within 15 days of this notice that it disagrees with the determination and request that the Secretary refer the application to the President. If no disagreement and request for referral is registered within the prescribed period, the Presidential Permit will be signed and issued to Keystone. On February 25, the Department notified all agencies of its intent to issue the Permit as required under Section 1(g) of the order.

For Further Information Contact: The Record of Decision and National Interest Determination, the Programmatic Agreement, the TransCanada Keystone Pipeline application for a Presidential Permit, including associated maps and drawings, the Final EIS and other project information is available for viewing and download at the project Web site: <http://www.keystonepipeline.state.gov>. For information on the proposed project contact Elizabeth Orlando, OES/ENV Room 2657, U.S. Department of State, Washington, DC 20520, or by telephone (202) 647-4284, or by fax at (202) 647-5947. U.S. Department of State, Washington, DC 20520, or by telephone (202) 647-4284, or by fax at (202) 647-5947.

Issued in Washington, DC on February 25, 2008.

Stephen J. Gallogly,

Director, Office of International Energy and Commodity Policy, Department of State.

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⁸ 17 CFR 200.30-3(a)(12).